

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

COMERICA BANK,

Plaintiff,

v.

STATE PETROLEUM DISTRIBUTORS,
INC.; PETROLEUM SERVICES, LLC;
BB&O MANAGEMENT, INC.;
DAWSON U., LLC; ROBERT LAMBERT;
and JOSEPH OCCHIPINTI,

Defendants.

Case No. 3:08-CV-678

(Judge Kosik)

STATE PETROLEUM DISTRIBUTORS,
INC.; PETROLEUM SERVICES, LLC;
BB&O MANAGEMENT, INC.;
DAWSON U., LLC; ROBERT LAMBERT;
and JOSEPH OCCHIPINTI

Plaintiffs,

v.

COMERICA BANK,

Defendant.

Consolidated Case No. 3:08-CV-920
(closed)

MEMORANDUM

Before us are Defendants' Motion to Dismiss Comerica's claims for equitable relief and Motion to Stay Proceedings pending the disposition of the parallel state court action. Pursuant to the agreement of the parties, these motions will be dismissed as moot.

PROCEDURAL HISTORY

On April 10, 2008, Plaintiff Comerica Bank ("Comerica") filed a complaint in the above-styled action in this court. A day prior, the defendants in this action commenced a civil action against Comerica in the Court of Common Pleas of Lackawanna County, Pennsylvania (the "state court action") by filing a writ of summons, and later filed a complaint on May 2, 2008. On May 13, 2008, Comerica removed the state court action to this court, where it was assigned civil

case number 3:08-920. On May 22, 2008, Comerica answered the defendants' removed state court complaint.

After reviewing the relief sought in the state court action, we decided that the removed state court action should be consolidated with the original federal court action under civil case number 3:08-678. We consulted with the parties, who agreed. Our Order of May 23, 2008 closed civil case number 3:08-920 and consolidated it with the above-styled case.

Prior to Comerica's removal of the state court action and our subsequent consolidation of that case, the defendants in this case on May 5, 2008, moved to dismiss the equitable claims and to stay the claims for damages until the resolution of the state court action. Comerica responded to oppose the motion on May 23, 2008, arguing that the motion was now moot because of the removal and consolidation of the state court action. The defendants have notified us that they agree. Accordingly, we will dismiss both motions as moot and order the defendants' to answer Comerica's complaint within twenty days.

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ORDER

AND NOW, this 9th day of June, 2008, IT IS HEREBY ORDERED THAT:

1. The Defendants' Motion to Dismiss is **DISMISSED** as moot;
2. The Defendants' Motion to Stay Proceedings is **DISMISSED** as moot; and
3. The Defendants are to **ANSWER** Comerica's complaint within twenty (20) days.

s/Edwin M. Kosik
United States District Judge